

**§ 883.106 Applicability and relationships between HUD and State agencies.**

(a) *Applicability.* This subpart A applies to contract authority set aside for a State Agency.

(b) *General responsibilities and relationships.* Subject to audit and review by HUD to assure compliance with Federal requirements and objectives, Housing Finance Agencies (HFAs) shall assume responsibility for project development and for supervision of the development, management and maintenance functions of owners.

(c) *Certifications and HUD monitoring.*  
(1) Generally, when reviewing any of the certifications of an HFA required by this part, HUD shall accept the certification as correct. If HUD has substantial reason to question the correctness of any element in a certification, HUD shall promptly bring the matter to the attention of the HFA and ask it to provide documentation supporting the certifications. When the HFA provides such evidence, HUD will act in accordance with the HFA's judgment or evaluation unless HUD determines that the certification is clearly not supported by the documentation.

(2) HUD will periodically monitor the activities of HFA's participating under this part only with respect to Section 8 or other HUD programs. This monitoring is intended primarily to ensure that certifications submitted and projects operated under this part reflect appropriate compliance with Federal law and requirements.

[61 FR 13592, Mar. 27, 1996]

**Subpart B—[Reserved]**

**Subpart C—Definitions and Other Requirements**

**§ 883.301 Applicability.**

The provisions of this subpart are applicable to newly constructed and substantially rehabilitated housing allocated contract authority under subpart B of this part and processed and constructed under the Fast Tract Procedures of subpart D. The definitions contained in § 883.302 and the provisions of § 883.307(b) regarding review and ap-

proval of financing documents, however, apply to all of this part.

**§ 883.302 Definitions.**

The terms *Fair Market Rent (FMR)*, *HUD*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

*ACC (Annual Contributions Contract).* The contract between the State Agency and HUD under which HUD commits to provide the Agency with the funds needed to make housing assistance payments to the Owner and to pay the Agency for administrative fees in cases where it is eligible for them.

*Agency.* See State Agency.

*Agreement—(Agreement to enter into Housing Assistance Payments Contract).* The agreement between the owner and the State Agency on new construction and substantial rehabilitation projects which provides that, upon satisfactory completion of the project in accordance with the HUD-approved proposal or final proposal, the Agency will enter into a Housing Assistance Payments Contract with the owner.

*Annual income.* As defined in part 813 of this chapter.

*Assisted unit.* A dwelling unit eligible for assistance under a Contract.

*Application.* A request, submitted by a State Agency, to assign a portion of its set-aside to a specific jurisdiction or project.

*Contract—(Housing Assistance Payments Contract).* The Contract entered into by the owner and the State Agency upon satisfactory completion of a new construction or substantial rehabilitation project which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

*Contract Rent.* The total amount of rent specified in the Contract as payable by the Agency and the tenant to the owner for an assisted unit. In the case of the rental of only a manufactured home space, "contract rent" is the total rent specified in the Contract as payable by the Agency and the tenant to the owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

*Existing Housing.* Housing assisted under a contract entered into pursuant to 24 CFR part 882. (See subpart E of this part.)

*Family (Eligible Family).* As defined in part 812 of this chapter.

*Fast Track procedures.* The procedures contained in subpart D for processing and construction of new construction and substantial rehabilitation projects. In order to be eligible for these procedures, a State Agency must provide permanent financing without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

*Financing Cost Contingency (FCC).* The maximum amount of contract authority which may be used to amend the Annual Contributions Contract (ACC) and Housing Assistance Payments Contract (HAP Contract) to provide increased contract rents to cover higher than anticipated debt service on the loan for a new construction or substantial rehabilitation project.

*Gross Rent.* As defined in part 813 of this chapter.

*Household type.* The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

*Housing Assistance Payment.* The payment made to the Owner of an assisted unit by the State Agency as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in § 883.303(i), the Housing Assistance Payment is the difference between Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a “vacancy payment”, may be made to the Owner when an assisted unit is vacant, as provided in § 883.712.

*Housing Assistance Plan (HAP).* A housing plan submitted by a unit of general local or State government and approved by HUD as being acceptable under the standards of 24 CFR part 570.

*Housing type.* The three housing types are new construction, substantial rehabilitation, and existing housing/moderate rehabilitation.

*HFA (Housing Finance Agency).* A State Agency which provides permanent financing for newly constructed or substantially rehabilitated housing processed under subpart D and financed without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

*Independent Public Accountant.* Certified Public Accountant or a licensed or registered public accountant, none of which has a business relationship with the owner or State Agency except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title “public accountant,” only Certified Public Accountants may be used.

*Low-Income Family.* As defined in part 813 of this chapter.

*Moderate rehabilitation.* The improvement of dwelling units in accordance with HUD requirements, under 24 CFR part 882.

*New construction.* Housing for which construction starts after execution of an Agreement, or housing which is already under construction when the Agreement is executed provided that:

(a) At the date an application is submitted to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(b) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(c) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

*Override.* The difference between an HFA's cost of borrowing on obligations issued to finance a new construction or substantial rehabilitation project and the lending rate at which they provide permanent financing for the project.

*Owner.* Any private person or entity (including a cooperative) or a public entity, having the legal right to lease or sublease dwelling units assisted under this part. The term Owner also includes the person or entity submitting a proposal to a State Agency under this part.

*Partially-assisted Project.* A project for non-elderly families under this part which includes more than 50 units, of which the number of assisted units does not exceed the greater of (a) 20 percent of the units in the project, rounded to the next highest whole number of units, or (b) the minimum percentage required by State law as a condition of HFA permanent financing, if the Assistant Secretary approves such minimum percentage for purposes of applicability of this definition.

*Permanent financing.* An Agency is determined to provide permanent financing if HUD determines that (a) the Agency permanently finances a project from its own funds, including the sale of its obligations; or (b) permanent financing for projects developed or administered by the Agency is provided by the State government or by an agency or instrumentality thereof other than the Agency; or (c) the permanent financing (by a public or private entity other than the Agency) is backed by the commitment of the Agency to assume the risks of loss on default or foreclosure of the loan.

*Project Account.* A specifically identified and segregated account for each project which is established in accordance with § 883.604(b) out of the amounts by which the maximum Annual Contributions Contract commitment exceeds the amount actually paid out under the ACC each year.

*Proposal.* A proposal for a project that is submitted by an HFA to HUD for Section 8 assistance under this part.

*Rent.* In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the co-

operative with respect to occupancy of the unit.

*Replacement cost—(a) New construction.* The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, miscellaneous charges incident to construction as approved by the Assistant Secretary.

(b) *Substantial rehabilitation.* The sum of the "as is" value before rehabilitation of the property as determined by the Agency and the estimated cost of rehabilitation, including carrying and finance charges.

*Single Room Occupancy (SRO) Housing.* A unit for occupancy by a single eligible individual capable of independent living, which does not contain food preparation and/or sanitary facilities and is located within a multi-family structure consisting of more than 12 units.

*Secretary.* The Secretary of Housing and Urban Development (or designee).

*Small Project.* A project for non-elderly families under this part which includes a total of 50 or fewer units (assisted and unassisted).

*State Agency (Agency).* An agency which has been notified by HUD in accordance with § 883.203 that it is authorized to apply for a set-aside and/or to use the Fast Track Procedures of this part.

*Substantial rehabilitation.* (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this part from a condition below these standards. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(b) Substantial Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure.

(c) Housing on which rehabilitation work has already started when the Agreement is executed is eligible for assistance as a Substantial Rehabilitation project under this part provided:

(1) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(2) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(3) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

*Tenant Rent.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Utility Allowance.* As defined in part 813 of this chapter, made or approved by HUD.

*Utility reimbursement.* As defined in part 813 of this chapter.

*Vacancy payments.* The housing assistance payment made to the owner by the State Agency for a vacant, assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

*Very Low-Income Family.* As defined in part 813 of this chapter.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56326, Aug. 22, 1980; 48 FR 12708, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19946, May 10, 1984; 61 FR 5213, Feb. 9, 1996; 61 FR 13592, Mar. 27, 1996; 63 FR 46579, Sept. 1, 1998]

**§ 883.306 Limitation on distributions.**

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract and after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first

year's distribution may not be made until the HFA certification of project costs, (See § 883.411), where applicable, has been submitted to HUD. The HFA must certify that distributions will not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(2) For projects for non-elderly families the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by the HFA at cost certification (See § 883.411), or as specified in the Proposal where cost certification is not required, unless the owner justifies a higher equity contribution through cost certification documentation accepted by the HFA.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If the HFA determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements